

## HR Weekly Podcast

March 4, 2015

Today is March 4, 2015, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's topic discusses disciplining employees after a Family Medical Leave Act , or FMLA, request.

The FMLA prohibits employers from retaliating against employees for exercising their rights under the FMLA. Consequently, employers are often hesitant to discipline employees soon after FMLA is requested or when an employee returns from FMLA leave. A recent court case illustrates why employers should be cautious in taking actions at these times.

Ms. Lori Flood was a pediatric pharmacist at the University of Maryland Medical Systems Corporation. One day while at work, she left her work station to go home to retrieve medication for back pain related to degenerative disc disease. Prior to leaving her work station, Ms. Flood attempted to contact her supervisor but was unable to reach her prior to leaving. Failing to get approval prior to leaving her workstation was in violation of the University's policy.

When Ms. Flood returned to work, she appeared confused and was slurring her speech. As a result, her supervisor sent her home and placed her on leave pending the results of a fitness for duty exam. After being on leave for seven weeks, Ms. Flood requested FMLA leave. Two days after her FMLA request, Ms. Flood was terminated for leaving her work station without approval.

Ms. Flood filed a lawsuit. The University moved to have the case dismissed on summary judgment but the request was denied and the case was referred to trial. In reviewing the case, the court noted the extended length of time between the violation and Ms. Flood's termination and the short period between her request for FMLA leave and her termination. The court concluded that sufficient evidence existed for a jury to find that the reason given for Ms. Flood's termination was a pretext.

In reviewing Ms. Flood's case for an article in Business Management Daily, Ms. Mindy Chapman, Esquire, identified three lessons to be learned by employers from Ms. Flood's case. First, enforce all policies promptly. The longer period of time an employer takes between an employee's infraction and the disciplinary action then the more time an employee has to exercise other legal rights, such as requesting FMLA leave, that may make taking other employment actions problematic. Second, employers should read documents carefully to ensure they have a clear understanding of what the employee's situation is and what protections they are afforded. Finally, stop all pending employment actions once an employee requests FMLA leave and proceed cautiously as discipline that occurs quickly after an employee requests FMLA leave may appear to be retaliatory.

While employers should be cautious when disciplining employees who have requested FMLA leave, employers are not excluded from taking appropriate disciplinary action. Employers should, however, take extra care when disciplining employees in this situation to ensure policies and procedures are correctly followed and documented. Thank you.